

RULE 66 LAWYERS' FUND FOR CLIENT PROTECTION
Supreme Court Rules

[Effective December 14, 2004]

(a) Operation and purpose of trust fund.

(i) Operation. The trust fund, known as the "Lawyers' Fund for Client Protection" (hereinafter referred to as "the trust fund"), shall be operated and administered in accordance with this rule by 9 trustees, appointed as hereinafter provided. The trustees shall be known as the "Trustees of the Lawyers' Fund for Client Protection."

(ii) Purpose. The purpose of the trust fund shall be to establish, as far as practicable, the collective responsibility of the profession in respect to losses caused to the public by defalcations of members of the Bar, acting either as attorneys or as fiduciaries (except to the extent to which they are bonded, or to the extent such losses are otherwise covered).

(b) Appointment and compensation of trustees, officers and associate trustees.

(i) Members. The trustees shall be appointed by this Court and shall consist of 7 persons who shall be members of the Bar and 2 persons who shall be public members who are not members of the Delaware Bar.

(ii) Terms. Each of the counties shall be represented on the trust fund. The term of appointment shall be 4 years, provided however that no trustee shall be appointed for more than 2 consecutive terms.

(iii) Officers. The trustees shall from time to time elect from their membership a Chair, a Treasurer, and such other officers as they deem necessary or appropriate.

(iv) Removal. A trustee may be removed by the Court at any time in its discretion.

(v) Vacancy. Vacancies shall be filled by appointment by the Court for the unexpired term.

(vi) Expenses only. The trustees and the associate trustees shall serve without compensation, but shall be entitled to reimbursement from the trust fund, if no other source of funds is available, for their expenses

reasonably incurred in performance of their duties as trustees, including transportation costs.

(vii) **Associate trustees.** The Court shall appoint five Associate Trustees to assist the Trustees in performing their duties. The Associate Trustees shall be appointed for a term of four years, unless sooner removed by the Court. There shall be at least one Associate Trustee from each county. Associate Trustees may not vote on any determination or decision by the Trustees.

(c) **Powers and duties of trustees.**

(i) **Additional powers.** In addition to the powers granted elsewhere in this rule, the trustees shall have the following powers and duties:

(1) **Fund management.** To receive, hold, manage and distribute, pursuant to this rule, the funds raised hereunder, and any other moneys that may be received by the trust fund through voluntary contributions or otherwise.

(2) **Pay claims.** To authorize payment of claims in accordance with this rule.

(3) **Adopt procedures.** To adopt, with the approval of the Court, regulations for the administration of the trust fund and the procedures for the presentation, consideration, recognition, rejection and payment of claims, and to adopt bylaws for conducting business. A copy of such regulations shall be filed with the Clerk of this Court.

(4) **Enforce restitution.** To enforce claims for restitution, arising by subrogation or assignment or otherwise; to advance and pay incidental litigation expenses in those cases deemed by the Trustees to either directly or indirectly affect the purposes of the trust fund and its efficient administration.

(5) **Investments.** To invest the trust fund, or any portion thereof, in such investments as they may deem appropriate, and to cause funds to be deposited in any bank, banking institution or federally insured savings and loan association in this State, provided however, that the trustees shall have no obligation to cause the trust fund or any portion thereof to be invested.

(6) **Pay assistants.** To employ and compensate consultants, agents, legal counsel and employees.

(7) **Delegate powers.** To delegate the power to perform routine acts which may be necessary or desirable for the operation of the trust fund, including the power to authorize disbursements for routine operating expenses of the trust fund, but authorization for payments to be made to reimburse losses caused by defalcations of members of the Bar shall be made only as provided in Rule 66(g).

(8) **Suits in trust name.** To sue or be sued in the name of the trust without joining any or all individual trustees.

(9) **Other acts.** To perform all other acts necessary or proper for fulfillment of the purposes of the trust fund and its efficient administration.

(10) **Compliance powers.** In order to determine compliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct and its guidelines: (a) To require each member of the Bar of this Court to submit to the trustees such financial and accounting data or similar information as may be prescribed from time to time by the Court; (b) to conduct selected examinations of books and records required by the Court to be kept by members of the Bar, such examinations to be conducted in accordance with the rules and regulations approved by the Court; and (c) to report to the Office of Disciplinary Counsel any member of the Bar found to be in noncompliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct or any failure by any member of the Bar to furnish required data or information.

(11) **Delegate powers to associate trustees.** To delegate to associate trustees such duties and functions as the trustees may prescribe.

(ii) **Report to the court.** At least once each year, and at such additional times as the Court may order, the trustees shall file with this Court a written report.

(d) **Meetings and quorum.**

(i) **Meetings.** Meetings of the trustees shall be held at the call of the Chair or a majority of the trustees, and shall be held at least once each year, upon reasonable notice.

(ii) **Quorum.** Five trustees shall constitute a quorum. A majority of the trustees present at a duly constituted meeting may exercise any powers held by the trustees, except to the extent that this rule provides otherwise.

(e) **Assessments to fund Lawyers' Fund for Client Protection.**

Bar assessments. The trust fund shall be funded from assessments made annually against active members of the Bar of this Court. As a condition of continuing active membership in the Bar of this Court, every active member, except judges disqualified from practicing law, shall pay to the Court an annual assessment as determined by the Court in the Annual Registration Statement pursuant to Supreme Court Rule 69. The assessment is due and payable on January 1 of each year and delinquent if not paid by February 1 of that year.

(f) **Treasurer's duties.**

(i) **Maintain fund.** The trust fund shall be maintained by the Treasurer in a separate account.

(ii) **Disbursements.** The Treasurer shall disburse moneys from the trust fund only upon the action of the trustees pursuant to this rule.

(iii) **Surety.** The Treasurer shall file a bond annually with the trustees for the proper execution of the duties of the office of Treasurer of the trust fund, with such surety as may be approved by the trustees and in such amount from time to time as may be fixed by the trustees.

(g) Claims.

(i) Determination of merits. The trustees are invested with the power, which they shall exercise at their sole discretion, to determine whether a claim merits reimbursement from the trust fund, and, if so, the amount of such reimbursement, the time, place and manner of its payment, the conditions upon which payment shall be made, and the order in which payments shall be made. The trustees' powers under this rule may be exercised only by the affirmative vote of at least 5 trustees.

(ii) Rights in fund. No claimant or other person, or organization, has any right in the trust fund as beneficiary or otherwise.

(iii) Exercise in discretion. In exercising their discretion, the trustees may consider, together with such other factors as they deem appropriate, the following:

(1) Funds available. The amounts available and likely to become available to the trust fund for payment of claims.

(2) Contingent claims. The size and number of claims which are likely to be presented in the future.

(3) Total losses. The total amount of losses caused by defalcations of any one attorney or associated groups of attorneys.

(4) Unreimbursed amounts. The unreimbursed amounts of claims recognized by the trustees in the past as meriting reimbursement, but for which reimbursement has not been made in the total amount of the loss sustained.

(5) Relative loss. The amount of the claimant's loss as compared with the amount of the losses sustained by others who may merit reimbursement from the trust fund.

(6) Hardship. The degree of hardship the claimant has suffered by the loss.

(7) Contributory negligence. Any negligence of the claimant which may have contributed to the loss.

(iv) Conditions of payment. In addition to other conditions and requirements the trustees may require each claimant, as a condition of payment, to execute such instruments, to take such action and to enter such

agreements as the trustees may desire, including assignments, subrogation agreements, trust agreements and promises to cooperate with the trustees in making and prosecuting claims or charges against any person.

(v) **Claims barred.** No claim shall be recognized which is based upon a defalcation which occurred prior to January 1, 1967.

(vi) **Investigative assistance.** The trustees may request individual lawyers, bar associations and other organizations of lawyers to assist the trustees in the investigation of claims.

(h) **Powers of the Supreme Court; audits.**

(i) **Complete control of trust.** This Court may amend, modify or repeal this rule at any time without prior notice, and may provide for the dissolution and winding up of the affairs of the trust.

(ii) **Audit trust.** This Court may at any time arrange for an audit to be made of the accounts of the trust fund by state or private auditors or may at any time direct the trustees to cause such an audit to be made. The cost of any such audit shall be paid by the trust fund.

(iii) **Advise trustees.** The trustees may apply to this Court for interpretation of this rule, and for advice as to their powers and as to the proper administration of the trust. Any final order issued by this Court in response to any such application shall finally bind and determine all rights with respect to the matters covered therein.

(iv) **Distribution upon dissolution.** Upon the dissolution of the trust, the trust assets shall be distributed by this Court either to the Treasury of the State of Delaware or to any organization or organizations designated by this Court, contributions to which are deductible under Section 170 of the Internal Revenue Code of 1954.